

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
WRIT PETITION NO.2527 OF 1997

Mahadu Dagdu Kale and another .. Petitioners

Versus

State of Maharashtra and Ors. .. Respondents

Mr.P.S.Dani for the petitioners

Mr.C.R.Sonawane, A.G.P. for respondent no.1 to 3

**CORAM: A.P.SHAH &
S.U.KAMDAR, JJ**

DATED: 2ND SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition, the petitioner is challenging the acquisition proceedings initiated under the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 r/w Land Acquisition Act, 1894. Some of the facts are as under:

2. The father of the petitioner was original owner in respect of various plots of land. It is the

case of the petitioners that some time in or about October 1968 the partition was effected which was reduced in writing and consequent upon the said partition the land admeasuring about 1 Hectare and 23 Ares came to the share of the petitioner out of Gat No.87/1 + 2. The father of the petitioner expired on 7th September 1979. After the death of the father the acquisition proceedings commenced by a Notification dated 28th November, 1988 under section 4 of the Land Acquisition Act. Notification under section 6 of the said Act came to be issued sometime in or about 1989. It is the case of the petitioner that the said notifications were issued in the name of the deceased father. The said acquisition proceedings was thereafter continued and ultimately concluded by passing an award in the name of the deceased father. It is the case of the petitioner that he did not receive any notice under section 5A of the Land Acquisition Act and thus he was denied opportunity of raising objections to the said acquisition proceedings.

3. Alternatively the case of the petitioner is

that on 6th October 1968 there was a partition of the properties and the property was divided. On such division the holding of the petitioner was only 1 Hectare and 23 Ares which was less than the prescribed slab of 3 Hectares and 23.75 Ares under the Schedule A Part II of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and therefore the said land could not have been the subject matter of acquisition.

4. The respondents have filed a reply and resisted the present petition. It has been inter alia contended by the respondents that the proceedings were continued and concluded in the name of the deceased father because his name remained on the revenue record even after his death. It has been further contended that in so far as s.5A enquiry is concerned, the same was conducted in January 1989 and in the said enquiry the petitioner has filed his objection and the same are rejected.

5. In the light of the averments made in the affidavit in reply, the contention of the

petitioner that the petitioner was not heard in s.5A enquiry cannot be accepted and the same is required to be rejected. In so far as the case of the petitioner is concerned that the land is not liable for acquisition u.s.11 of the said Act read with s.4 of the Land Acquisition Act because it is below the minimum prescribed slab. We are of the opinion that the said contention has merits and deserves to be accepted. Once there is a partition and the land of the petitioner's share is below the limit prescribed under Schedule 'A' part II of the said Resettlement Act, 1976 then the same cannot be acquired. Therefore, the said acquisition proceedings are liable to be quashed and set aside.

6. The land is still in possession of the petitioner herein. There has been an interim order in the present petition by which the possession of the petition has been protected.

7. In view thereto we are of the opinion that the present petition is required to be allowed. Accordingly we allow the present petition in terms

of prayer clause (a) of the petition. Petition is made absolute. However, there shall be no order as to costs.